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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1981

JOHN E. ALTMAN, et al.,

*Petitioners,*

vs.

HEALTH AND HOSPITALS GOVERNING COMMISSION OF COOK COUNTY,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## ORDER AND OPINION BELOW

The Decision of the Circuit Court of Cook County, granting the relief sought by petitioners was entered October 31, 1979. It has not been officially reported. The Opinion of the Appellate Court of Illinois reversing the Order of the Circuit Court of Cook County, dated

December 2, 1980 has been officially reported at 91 Ill. App. 3d 498, 414 N.E. 2d 1091 (1980), attached hereto as Appendix A.

On March 30, 1981, the Illinois Supreme Court denied petitioners' Petition for Leave to Appeal, said order attached hereto as Appendix B.

## STATEMENT OF THE CASE BELOW

This case arose out of the lay-off of approximately 500 employees of Cook County Hospital and Oak Forest Hospital in April, 1978. The respondent operated the hospitals pursuant to authority vested in it by Illinois Revised Statutes, 1977, Ch. 34, Par. 5011, *et seq.* The petitioners are 83 building tradesmen laid off at that time. The petitioners filed a complaint in the Circuit Court of Cook County asking to be reinstated with back pay and benefits. After an evidentiary hearing, the Circuit Court ruled that the lay-off of the petitioners was done in bad faith and granted the relief requested.

The cause was then appealed to the Appellate Court of Illinois. The Appellate Court reversed the trial court. On March 30, 1981, the Supreme Court of Illinois denied petitioners' Petition for Leave to Appeal.

## ARGUMENT

The Petition for Writ of Certiorari should be denied. There is no federal issue that needs to be clarified by this Court. This Court has consistently ruled that it will not review a state court judgment based upon an adequate and independent nonfederal or state ground even though a federal question may be involved. *Murdock v. Memphis*, 20 Wall. 590; *Berea College v. Kentucky*, 211 U.S. 45; *Fox Film Corp. v. Muller*, 296 U.S. 207.

The main issue in this case is whether the lay-off of the petitioners was in bad faith. The Illinois Appellate Court stated, upon consideration of the record, it could find no evidence of bad faith on the part of the respondent.

The Court noted that the record showed that the Governing Commission members voted to reduce expenditures because of an anticipated $8 to $10 million shortfall of revenue, and that a savings of $1,332,574 was realized by reason of the lay-off. The Court based its ruling on an earlier Illinois decision, *Chestnut v. Lodge*, 77 Ill. App. 2d 281, 222 N.E. 2d 36 (1966) which defined "bad faith." The Court said that "bad faith" was a "mixture of motive and result . . ." *Chestnut v. Lodge*, p. 288. The Appellate Court then stated that the evidence proved neither a bad faith motive nor a bad faith result. The Court stated that "(t)he uncontested motive and result of the Commission's action was to save money. It was not within the trial court's authority to second guess the Commission." (Pet. p. 6a.)

The Illinois Appellate Court found sufficient basis in fact and in Illinois law to rule that the lay-off of the

petitioners was legally permissible. For that reason, review by this Court is not warranted.

## CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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July 28, 1981

# APPENDIX A

Second Division
December 2, 1980

No. 79-2121

JOHN E. ALTMAN, et al.,

Plaintiffs-Appellees,

v.

THE HEALTH AND HOSPITALS GOVERNING COMMISSION OF COOK COUNTY,

Defendant-Appellant.

Appeal From The Circuit Court Of Cook County
Honorable NATHAN M. COHEN, *Judge Presiding.*

MR. JUSTICE DOWNING delivered the opinion of the court:

Plaintiffs, 83 former employees of defendant Health and Hospitals Governing Commission of Cook County (the Commission),[1] brought this action seeking reinstatement of employment. After a bench trial, the court made several findings of fact and concluded the Commission, arbitrarily and in bad faith, laid-off plaintiffs. The court then awarded plaintiffs back pay and ordered their reinstatement. On appeal, the Commission raises two issues: (1) whether the trial court's findings are against the manifest weight of the evidence; and (2) whether plaintiffs were afforded hearings which satisfied due process of law requirements.

On March 27, 1978, plaintiffs were notified that they would be laid-off "due to lack of funds," effective April

[1] Effective November 30, 1979, the Commission's enabling statute was repealed by the County Hospitals Act (Ill. Rev. Stat. 1979, ch. 34, par. 5011 *et seq.*, as amended by Pub. Act 81-1197, effective November 30, 1979) and, according to appellant's brief, the County of Cook became its successor in interest.

7. 1978. Plaintiffs are tradesmen who were "merit employees" working in the Building and Grounds Departments at Oak Forest and Cook County Hospitals. These health care facilities were operated by the Commission pursuant to the County Hospitals Governing Commission Act (Ill. Rev. Stat. 1977, ch. 34. par. 5011 *et seq.*).

On April 18. 1978. plaintiffs filed this action. Count one of the second amended complaint alleges the Commission's March 22. 1978 resolution authorizing a reduction in expenditures and a lay-off of employees was not required because the Cook County Board of Commissioners appropriated increased funds for fiscal year 1978 which were sufficient to continue plaintiffs' employment. Therefore, plaintiffs allege. their lay-offs were in bad faith. Count two states plaintiffs have a constitutionally-protected property interest in their continued employmen sufficient to require plenary hearings regarding lay-offs. Defendants answered that its total funding for fiscal year 1978 was insufficient to meet all expenses in its original proposed 1978 budget. and it therefore exercised its discretion and reduced budgeted expenditures by, *inter alia*, reorganizing its construction program and laying-off plaintiffs. Defendants also respond that plaintiffs had access to adequate hearings.

At trial. several plaintiffs testified as to the nature and duties of their former employment. their years on the job. and the wages and benefits they received. Workers in the following categories were given notices of a lay-off on March 27. 1978: carpenters. painters. plasterers and lathers. plumbers. bricklayers. electricians. and steam fitters. A glazier was also laid-off. However, not all tradesmen were laid-off.

The April 7 lay-off notices indicated the lay-off was "due to a lack of funds" and that any recalls would follow the Commission's Personnel Policy and Procedures Manual. Some of the laid-off employees requested and were given hearings to contest the procedures used in their lay-offs. The scope of these hearings did not ex-

tend to inquiry regarding the justification for the lay-offs. Four employees at the Oak Forest Hospital were subsequently recalled.

Plaintiffs also adduced testimony that Thomas Quilty, the mechanics supervisor at Cook County Hospital, told plaintiffs Gary Ellinger and John Crocco that all painters and bricklayers would be laid-off in order to eliminate the foremen of those shops. Forty-two tradesmen were employed in those shops.

Plaintiffs introduced various exhibits which included Commission purchase orders for services performed by subcontractors. These services paralleled, in many cases, the work previously performed by the civil service plaintiffs. The purchase orders indicated the subcontracted services were performed on an as-needed basis throughout the next 18 months at both facilities. A major renovation of a building at Oak Forest Hospital was accomplished through subcontracted work, although that work was not let by the Commission.

Testimony indicated plaintiffs were not explicitly told they had a right under Commission policy to request transfers to other positions at the hospitals. Non-trade job positions were subsequently filled with new employees.

Defendants produced the testimony of James G. Haughton, the Commission's executive director. He testified that the Commission received its funds from patients and third party payers. The balance of its funds is provided by the Cook County Board of Commissioners (the Board). The Commission's budgets are set and approved by the Board. The Board approved a 1978 budget which was $18 million less than what the Commission requested. Haughton advised the Commission of that fact and it passed a resolution, No. 78-HHGC-50, authorizing him to make reductions in budgeted expenditures. The reductions were to be made with the object of maintaining patient care quality. Hospital directors were told to submit reduction proposals. One of those proposals included a lay-off of plaintiffs. Haughton approved that proposal, among others.

Members of the Commission also testified that they were apprised of the financial crisis and that an expected $8 to $10 million revenue shortfall necessitated cutbacks. They then voted for the above numbered resolution.

John DiLisi, director of the Building and Grounds Department at Cook County Hospital, testified that Thomas Quilty had no authority to lay-off any employee. He also stated that after the lay-off several contracts were let for services never previously performed by plaintiffs.

Robert Landsman, an independent accountant, testified that he reviewed the proposed budget and anticipated shortfall with members of the Commission after his firm had conducted a hundred hour examination of the Commission's finances. Defendant then submitted to the court various exhibits in support of its testimony.

After argument of counsel the trial court orally stated its findings:

> "The evidence clearly showed that the members of the Commission believed that they were going to fall short of their anticipated budget by several million dollars, and that some budget cuts would have to be made. The members desired to make cuts in areas that would least effect patient services. That is, the trades involved in construction and maintenance.
>
> Decisions regarding layoffs were based on seniority lists as mandated by the merit system and notices were duly sent. None of these procedures were seriously contested by plaintiffs."

The court went on, however, to find that defendant failed to answer plaintiffs' claim that some in-house tradesmen could have been retained on an as-needed basis, rather than hiring outside contractors. The court surmised that such retentions "might actually have saved the defendant a greater sum of money," and furthermore, that at least some subcontractors charged an hourly cost greater than the in-house tradesmen. The court found that the only logical reason for the extensive lay-offs was to get rid

of a few senior foremen. It then concluded the evidence shows bad faith.

The court held plaintiffs were entitled to, but wrongfully denied, plenary hearings to challenge the reason for their lay-offs, and that the lay-offs were really intended as terminations. Plaintiffs were ordered reinstated with back pay, benefits, and other conditions of employment.

I.

Defendant claims the trial court's findings are against the manifest weight of the evidence. It argues plaintiffs failed to rebut the legal presumption that the Commission acted in good faith and with reasonable exercise of discretion. Absent such a rebuttal, defendant concludes its action in approving the lay-offs is beyond judicial evaluation.

Plaintiffs do not contest here the Commission's authority to order lay-offs due to lack of work or funds. Plaintiffs allege the reason for their lay-offs was neither. They contend the Commission acted in bad faith. "Bad faith" is a "mixture of motive and result * * *." (*Chestnut* v. *Lodge* (4th Dist. 1966), 77 Ill. App. 2d 281, 288, 222 N.E.2d 36, *leave to appeal den.* (1967), 35 Ill. 2d 630.)[1] An analysis of evidence relative to both is therefore appropriate.

The record discloses no evidence of bad faith motive chargeable to the Commission. Commission members testified that they voted for the resolution directing a reduction in expenditures because they were concerned about the anticipated $8 to $10 million shortfall of revenue. They wanted to maintain patient services. Physical plant maintenance and construction expenditures were therefore a logical area to address reductions. The trial court's initial finding is consistent with this conclusion. The trial court, however, subsequently focused upon evi-

[1] For a definition of "bad faith" see also Black's Law Dictionary 127 (5th ed. 1979).

dence that a supervisor indicated in conversation with two plaintiffs that all painters and bricklayers would be laid-off to "get at" the foremen of those shops. Uncontroverted testimony indicates that the supervisor was without authority to order such a lay-off. Furthermore, even an "established vendetta" of plaintiffs' immediate supervisor is insufficient to establish that those in authority made a bad faith lay-off. (*Juergensmeyer* v. *Bensinger* (4th Dist. 1972), 7 Ill. App. 3d 698, 699, 288 N.E.2d 519.) Therefore, no bad faith motive has been shown.

The manifest weight of the evidence also indicates no bad faith result. Plaintiffs contend the lay-offs were ordered to remove a few foremen who drew the ire of a supervisor. The lay-offs at issue affected 83 tradesmen in eight trades. Approximately 500 other employees were laid-off at the same time. We find it difficult to believe lay-offs of such magnitude can be traced to a relatively minor personnel problem. Rather the evidence clearly shows that had plaintiffs been retained in their former positions, their wages and benefits would have amounted to $1,869,634. It is uncontested that maintenance and construction work was reduced under the 1978 budget. Contracts let to outside companies who arguably performed some of the services previously done by plaintiffs amounted to $537,060.30. A $1,332,574 reduction in maintenance and construction expenditures was accomplished after the lay-offs. This savings does not include reduced costs for materials supplied by outside contractors. Thus, notwithstanding the fact that unit costs for some trades might have been lower if performed by plaintiffs, the Commission achieved substantial reduction in maintenance and construction costs. The Commission's stated motive for the lay-offs resulted in savings. Such action does not amount to "bad faith."

The uncontested motive and result of the Commission's action was to save money. It was not within the trial court's authority to second guess the Commission on how it could effect a savings. (*People ex rel. Behnke* v. *Mc-*

*Laughlin* (1935), 362 Ill. 274, 277, 199 N.E. 810.) The question for the trial court was whether bad faith was evident (see *City of Chicago* v. *People ex rel. Byrne* (1st Dist. 1904), 114 Ill. App. 145, 155), and absent that evidence a presumption of good faith survives. See generally *Levesque* v. *Walker* (4th Dist. 1974), 24 Ill. App. 3d 828, 831, 321 N.E.2d 278; *Chestnut* v. *Lodge, supra*, 77 Ill. App. 2d at 288-89; *O'Neill* v. *Fitzsimmons* (1st Dist. 1904), 114 Ill. App. 168, 171-72, *aff'd Fitzsimmons* v. *O'Neill* (1905), 214 Ill. 494, 73 N.E. 797.

Finally, we believe plaintiffs' reliance upon *People ex rel. Byrnes* v. *Stanard* (1956), 9 Ill. 2d 372, 377, 137 N.E. 2d 829 and *People ex rel. Jacobs* v. *Coffin* (1918), 282 Ill. 599, 610, 119 N.E. 54 is inapposite. These cases involve the replacement of individual civil service employees through the uncontested use of subterfuge. Each non-civil service replacement employee performed duties identical to those performed by his predecessor. Each employer's apparent aim was to terminate a particular employee. Absent these facts, neither case requires a finding of bad faith here. Accordingly, the trial court's finding of bad faith is against the manifest weight of the evidence.

II.

Defendants also contend the trial court erred when it held plaintiffs were unconstitutionally denied a plenary hearing during which they could challenge the grounds for their lay-offs.

Plaintiffs concede the Commission's conduct did not result in any violation of a substantive due process right. Rather they contended at trial that their job lay-offs were predicated upon bad faith and abuse of discretion. They point to a provision in the Commission's enabling statute as requiring a full hearing upon their discharge. (See Ill. Rev. Stat. 1977, ch. 34, par. 5026.) They argue that their lay-offs are equivalent to discharges and that because they were not permitted to challenge the basis of those lay-offs during the hearings

afforded them, their statutory right to a full hearing has been denied. Furthermore, they rely upon several cases for the proposition that their expectation in continued employment amounted to a property interest which could not be taken in the absence of a full hearing. See generally *Board of Regents* v. *Roth* (1972), 408 U.S. 564, 577-78, 33 L. Ed. 2d 548, 92 S. Ct. 2701; *Young* v. *Brashears* (7th Cir. 1977), 560 F. 2d 1337, 1340; *Mims* v. *Board of Education* (7th Cir. 1975), 523 F. 2d 711, 715.

Plaintiffs' cases are inapposite. Plaintiffs were laid-off in good faith. No discriminatory purpose is alleged. They were not "discharged" as that term is used in section 5026 of the County Hospitals Governing Commission Act. That Act contains virtually the same language as did the statute in *Fitzsimmons* v. *O'Neill, supra,* where the supreme court stated:

> "That section refers to cases where an officer or employee is removed for some reason personal to himself. His right to be heard in his defense upon written charges, • • • implies that the cause of his removal is some dereliction, or neglect of duty, or incapacity to perform duty, or some delinquency, which affects his fitness for the position occupied by him. The provision in question does not apply to a case where the incumbent is dismissed for want of funds • • •." (214 Ill. at 503.)

The Commission provided for a hearing allowing laid-off employees to challenge the procedure for lay-offs. The statute requires no more.

Finally, although plaintiffs may have a constitutionally-protected property interest in their expected employment, that interest is adequately protected by the hearing provided them. (*Powell* v. *Jones* (1973), 56 Ill. 2d 70, 82, 305 N.E. 166.) In *Powell* v. *Jones,* our supreme court assessed the protections constitutionally mandated in *Perry* v. *Sindermann* (1972), 408 U.S. 593, 33 L. Ed. 2d 570, 92 S. Ct. 2694, and *Board of Regents* v. *Roth, supra,* and concluded that in the case of lay-offs, as distinguished

from discharges, a plenary hearing was not required. "It would be virtually impossible for State government to function without substantial confusion, delay and uncertainty if each certified employee were entitled to receive a plenary hearing prior to a lay-off." (56 Ill. 2d at 82.) Plaintiffs in the instant case were afforded an opportunity to challenge the procedure governing their lay-offs. Although the scope of that hearing was limited and did not extend to challenges of the Commission's discretionary acts, plaintiffs were entitled to no more.

In accordance with the aforementioned reasons, the judgment of the circuit court of Cook County is reversed.

Reversed.

STAMOS and HARTMAN, *JJ.*, concur.

# APPENDIX B

ILLINOIS SUPREME COURT

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Springfield, Ill. 62706
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March 30, 1981

Mr. Lester Asher
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No. 54473 - John E. Altman, et al., petitioners, vs. The Health and Hospitals Governing Commission of Cook County, respondent. Leave to appeal. Appellate Court. First District.

The Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,
/s/ Clell L. Woods

Clerk of the Supreme Court